



**DEPARTMENT OF PUBLIC SAFETY
POLICIES & PROCEDURES**



POLICY NUMBER

OPR:38

**EFFECTIVE
DATE:
03/03/2011**

**ORIGINAL
ISSUED ON:
02/26/2007**

SUBJECT: JUVENILE ENFORCEMENT AND CUSTODY

REVISION NO:

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1.0 PURPOSE

The purpose of this policy is to provide guidelines for commissioned officers when dealing with juveniles in enforcement and custody situations.

2.0 POLICY

It is the policy of the Department of Public Safety to provide its commissioned employees with guidance regarding enforcement and custody situations relating to juveniles and to ensure that the overriding concern is the health, safety, and welfare of the child. The Department of Public Safety is committed to the development, implementation, and continuation of programs designed to prevent and control juvenile delinquency within the State of New Mexico.

3.0 APPLICABILITY

This policy is applicable to all commissioned personnel of the Department of Public Safety.

4.0 REFERENCES

- A. DPS Deputy Secretary's Correspondence, December 2, 2003, "Traffic Citations Issued to Children"**
- B. Chapter 14 Article 2, NMSA 1978, Inspection of Public Records Act**
- C. Chapter 29 Article 10, NMSA 1978, Arrest Record Information Act**
- D. Chapter 31, NMSA 1978, Criminal Procedure**
- E. Chapter 32A, NMSA 1978, Children's Code**
- F. CALEA Chapter 44 - Juvenile Operations**

5.0 DEFINITIONS

- A. Child/Juvenile** – A person who is less than 18 years of age.
- B. Children's Code** –Chapter 32A, Article 1-23, NMSA 1978.
- C. CYFD** – The New Mexico Children, Youth, and Families Department.
- D. Delinquent Act** – An act committed by a child that would be designated as a crime under the law if committed by an adult.
- E. Department** – The New Mexico Department of Public Safety (DPS).
- F. JPO** – Juvenile Probation Officer, who works for the Youth and Family Services Division of CYFD.

G. Status Offense – An act or omission committed by a child that would not constitute a crime if committed by an adult (i.e., truancy, curfew violation, etc.)

H. Supervised release - Refers to the release of a juvenile, whose term of commitment has not expired, from a facility for the care and rehabilitation of adjudicated delinquent children, with specified conditions to protect public safety and promote successful transition and reintegration into the community. A juvenile on supervised release is subject to monitoring by the department until the term of commitment has expired, and may be returned to custody for violating conditions of release.

Definition added.

6.0 PROCEDURE

A. JUVENILE OPERATIONS FUNCTION

1. All DPS employees are responsible for participating with and supporting juvenile operations. This includes any juvenile investigations that may involve the following:
 - a. Protection of the public, including juveniles.
 - b. Using appropriate officer discretion in the adjudication of the incident.
 - c. Determining if the juvenile has been harmed or is in any type of danger.
 - d. Deterring future criminal acts by educating juveniles on the consequences of their actions.
 - e. Providing treatment and rehabilitation to those juveniles who need it.
 - f. Emphasizing accountability and responsibility to both parents and children for the juvenile's conduct.
2. DPS employees should attempt to maintain the family integrity and only remove a child when it becomes necessary for the child's welfare and safety. In the event that a child is removed from their family, the child will be provided with care that would be expected from nurturing parents.
3. All DPS employees are encouraged to be involved with the youth of their communities. This includes department sponsored events like youth academies and school seminars as well as off-duty involvement.
4. DPS encourages continual interaction with other agencies in the juvenile justice system. In order to develop better policies and procedures as they relate to juveniles, DPS accepts reviews and recommendations from this agency interaction.

Clarification added.

B. CUSTODY OF DELINQUENT CHILDREN, GENERALLY

1. State statute provides specific and strict guidelines for departmental personnel when a child is placed in custody by an authorized person. The options are limited and time sensitive and all personnel shall become familiar with the statutory requirements. The officer's options are limited to the following:
 - a. Release the child to the child's parent or guardian or an adult authorized by the child's parent, guardian or custodian and issue verbal counsel or warning(s) as may be appropriate.

- b. Release the child to the child's parent or guardian or an adult authorized by the child's parent, guardian or custodian upon their written promise to bring the child before the proper court when requested.
 - c. Deliver the child to a place of detention in accordance with the Children's Code.
 - d. Deliver the child to a medical facility if required or deemed necessary.
 - e. Deliver the child to an evaluation facility if required or deemed necessary.
2. Commissioned personnel and supervisors are encouraged to exercise the utmost discretion in attempting to determine the appropriate action to be taken, including the factors of age, mental capacity, past history, and family support/structure.
3. When detention for a juvenile/child is required, the following guidelines shall be followed;
 - a. Status offenders shall **not** be placed in a secure setting such as holding cells, locked rooms, or handcuffed to a stationary object and shall be kept in regular sight supervision.
 - b. A child who has been arrested for an alleged delinquent act may be held in an adult facility or lockup for no longer than six hours for processing purposes.
 - c. While in department custody, delinquent juveniles/children shall be secured, transported, interviewed and/or interrogated separate from adult offenders. The secure setting shall be a physical separation by sight and sound from adult offenders. Circumstances dictating otherwise must be documented.
 - d. An adult detention facility or lockup used as a holding facility for alleged delinquent juveniles/children shall file a report regarding compliance with federal requirements. Attachment A, the *New Mexico Secure Holding Log* shall be submitted quarterly or as designated by the Juvenile Justice Advisory Compliance Monitor. The completed log can be submitted as directed on the log.
4. In all instances of a juvenile "custodial arrest" (as defined by current statute, constitutional law, case law, and departmental policy) the completion of an offense/incident report and supervisor notification by the arresting officer is mandatory.
 - a. Nothing in this policy prohibits a commissioned supervisor from requiring an offense/incident report from an officer handling any type of juvenile action or incident.

Clarification added.

C. CUSTODY OF DELINQUENT CHILDREN – FELONY CRIMES, VIOLENT CRIMES, AND D.W.I.

1. Children taken into custody by department personnel for crime(s) amounting to a felony, a full misdemeanor violent crime (i.e. Domestic Battery), or D.W.I. shall follow the following procedure:
 - a. Department personnel shall notify the JPO of the custodial arrest. Other than arrest warrants and court orders, the authority to incarcerate a juvenile/child rests solely with a JPO as described in the Children's Code.

2. Each State Police District and State Police Communications Center shall ensure that a current, on-call roster is available to all commissioned personnel for contacting the JPO.
 - a. In the event local a JPO is unavailable, department personnel shall contact the State Central Intake for CYFD.
 - b. Department personnel making a custodial arrest pursuant to this section shall notify a supervisor of the arrest.
 - c. Department personnel are encouraged to notify a JPO of aggravating or mitigating circumstances when advising of the custodial arrest.
 - d. When a juvenile offender is ordered detained/incarcerated by the JPO, the arresting officer shall notify the district attorney's office having jurisdiction over the case within 18 hours.
 1. The name of the accused and the offense charged, at a minimum, shall be provided to the district attorney's office within the time frame specified.
 - a. Nothing in this policy supersedes established protocols for district attorney notification as long as the said protocol is in compliance with state statute.
 - e. The appropriate complaint and supporting documentation shall be forwarded or transmitted to the Juvenile Probation Office of the CYFD and the District Court Judge for probable cause, 32A-2-13(A).1 within 18 hours of the arrest/incarceration.
 - f. The arresting officer shall afford the juvenile the opportunity to make three (3) phone calls within 20 minutes of arrival at a police station, sheriff's office, or other place of detention.
 - g. If the juvenile offender is ordered detained/incarcerated, the arresting officer shall make reasonable attempt(s) to notify the child's parent or guardian of the arrest, place of detention, and charge(s) pending.
 1. The officer shall notify his/her supervisor of the parental notification, or lack thereof.
 2. The arresting officer shall document in the offense/incident report the date/time of the parental notification, or in the alternative, the steps taken to attempt to notify the parent or guardian of the child.
 - h. Arresting officers are encouraged to gather information and be cognizant of the juvenile's family/support situation. If the officer identifies a "family in need of services" or a "family in need of court ordered services," as defined in the Children's Code, the arresting officer shall document the information in a report or in the complaint and forward the report or complaint to the JPO for disposition.
 - i. In situations where officers deem it appropriate to issue a juvenile a Non-Traffic citation in lieu of arrest they will adhere to the guidelines established in New Mexico State Statute 31-1-6. Officers who arrest a person without a warrant for a petty misdemeanor or any offense under Chapter 17 NMSA 1978 have the authority to offer the person arrested the option of accepting a citation to appear

in lieu of taking them to jail. However, officers must keep in mind that in the case of juveniles the final authority on incarceration rests with the JPO.

1. The citation issued should contain the name and address of the juvenile cited, the offense charged, and the time and place they are to appear. The officer shall explain the juvenile's right not to sign the citation and the effect of not signing the citation or failing to appear at the time and place stated on the citation. If the citation is for an alcohol offense and the officer has a parent or guardian or an adult authorized by the child's parent, guardian or custodian take over custody of the juvenile, the officer should have the parent or guardian or an adult authorized by the child's parent, guardian or custodian sign the citation as well as the juvenile for documentation purposes.
2. The juvenile's signature on the citation constitutes a promise to appear at the time and place stated on the citation. The juvenile cited shall receive one copy of the citation and a duplicate copy shall be filed with the court as soon as practical.
3. A citation issued pursuant to Statute 31-1-6 is a valid complaint if the person receiving it appears in court.
4. In a situation where the officer issues a citation in lieu of an arrest, the officer shall right NTC on the top right corner of the citation indicating the citation is a Non-Traffic Citation.

D. CUSTODY OF DELINQUENT CHILDREN – ALCOHOL CRIMES

1. The correlation between alcohol use/abuse, juvenile crime, and juvenile injury/death are well established in the State of New Mexico. As such, Department personnel shall take enforcement action on children found to be in violation of New Mexico liquor law(s) as follows:
 - a. At a minimum, all children in violation of liquor law(s) will be issued a Non-Traffic citation and released to their parent or guardian or an adult authorized by the child's parent, guardian or custodian after the parent or guardian or an adult authorized by the child's parent, guardian or custodian signs a promise to bring the child before the proper court, as enumerated in the Children's Code.
 1. The officer shall forward the citation and necessary complaint/supporting documentation to the local JPO for disposition.
 - b. An arresting officer's knowledge of a juvenile's previous delinquent history and probation/supervised release status should be weighed in determining whether or not the child is presented to the JPO for detention/incarceration.
 - c. Arresting officer(s) are encouraged to gather information and evidence, and be cognizant of "source violations," i.e., where the alcohol came from. Any evidence gathered in reference to this sub-section should be forwarded to the Special Investigations Division of the Department for follow-up investigation.
 1. Arresting officers who obtain evidence of a source violation involving a licensed liquor establishment shall forward the evidence and any

reports/documents to the Special Investigations Division of the Department for follow-up investigation.

- d. Arresting officers are encouraged to gather information and be cognizant of the juvenile's family/support situation. If the officer identifies a "family in need of services" or a "family in need of court ordered services", as defined in the Children's Code, the arresting officer shall document the information in a report or in the complaint and forward the report or complaint to the JPO for disposition.
- e. Nothing in this Section prohibits the incarceration of an alcohol offense juvenile upon the approval of the JPO, and in accordance with the Children's Code and state statute.

E. CUSTODY OF DELINQUENT CHILDREN – NON-VIOLENT MISDEMEANORS AND PETTY MISDEMEANORS

- 1. Officers are encouraged to weigh the seriousness of the offense, aggravating and/or mitigating circumstances, past history, age, mental capacity, education, and social/economic situation in determining enforcement action.
 - a. Officers are encouraged to collaborate with and seek the counsel of a supervisor in determining the appropriate enforcement action for non-violent misdemeanors and petty misdemeanors. The arresting/enforcing officer may:
 - 1. Release the child to a parent or guardian or an adult authorized by the child's parent, guardian or custodian and provide counsel, warning, and/or referral to appropriate social services as deemed necessary and appropriate. In these instances, officers shall document the incident in their daily log and transmit the incident to their respective District Communications Center for inclusion in the Department's CAD system.
 - 2. Release the child to a parent or guardian or an adult authorized by the child's parent, guardian or custodian after the parent or guardian or an adult authorized by the child's parent, guardian or custodian signs a promise to bring the child before the proper court. In these instances, a Non-Traffic citation or juvenile complaint, at a minimum, accompanied by the required documentation/report, will be forwarded to the Juvenile Probation Office for disposition.
 - 3. Incarcerate the child upon approval/authorization from an appropriate JPO as delineated in the Children's Code.
 - 4. Nothing in this Section prohibits the incarceration of a non-violent misdemeanor or petty misdemeanor juvenile upon the approval of the JPO, and in accordance with the Children's Code and state statute.

F. CUSTODY OF CHILDREN – MOTOR VEHICLE CODE, MOTOR CARRIER, GAME AND FISH VIOLATION(S)

- 1. Violations of the New Mexico Motor Vehicle Code, Motor Carriers Code, and Game and Fish Code or municipal/county ordinance traffic violations that meet the criteria of a "Penalty Assessment Misdemeanor" committed by children shall be referred to the court of statutory authority (municipal, magistrate, metropolitan). The juvenile

will be charged with the violation on a Uniform Traffic Citation, but the penalty assessment option **shall not** be offered to children by Departmental employees. Once the juvenile indicate that they understand the court summons, the officer shall ask the juvenile to sign the citation in the designated area. The officer shall provide the juvenile with the following information.

- a. The violation they are charged with.
 - b. The court they are to appear in.
 - c. Court appearance date or time frame to appear.
 - d. How to contact the respective court clerk's office.
2. Violations that mandate a court appearance and do not have a penalty assessment option will be handled in the same manner for juveniles as adults.
 3. Felony and D.W.I. Motor Vehicle Code/Motor Carrier violations shall be handled in accordance with Section B of this policy.

G. CUSTODY OF CHILDREN – STATUS OFFENSE(S)

1. Departmental personnel encountering a child in violation of a status offense (curfew violation, truancy, runaway, incorrigible child, etc.) should handle the violation consistent with Section D of this policy, while weighing the factors of age, past history, probation/parole status, mental capacity, education, social/economic situation, etc.
2. Department personnel are encouraged to monitor and document status offense(s) in their area of responsibility. In doing so, Department personnel may identify trends and/or issues that need or should be referred to the appropriate agency (i.e. schools, truancy officer, etc.) or command staff of the district.
3. Nothing in this Section prohibits the incarceration of a status offense juvenile upon the approval of the JPO, and in accordance with the Children's Code.

H. CUSTODY OF CHILDREN – PROTECTIVE CUSTODY

1. Department personnel may take a child into protective custody in accordance with the Children's Code.
2. Department personnel shall take a child into protective custody when the officer has reason to believe that:
 - a. The child has run away.
 - b. The child is without parental supervision AND the child is suffering from illness or injury.
 - c. The child has been abandoned.
 - d. The child is endangered by his surroundings and removal from the surroundings is necessary to ensure the child's safety.
3. If an officer takes a child into protective custody, he/she shall, in accordance with state statute:

- a. Inform the child of the reason(s) for the protective custody, AND
 - b. Immediately contact the JPO and CYFD Protective Services.
4. If at all possible, the officer taking the child into protective custody shall arrange for the transport of the child in a non-police vehicle.
 5. Any child taken into protective custody by Department personnel shall not be transported in the same vehicle that contains an adult placed under arrest unless circumstances surrounding the child's safety, welfare, or health determine otherwise.
 - a. If circumstances warrant the transport of a protective custody child in the same vehicle as an adult arrestee, the circumstances shall be documented in the officer's offense/incident report
 6. No child taken into protective custody by Department personnel shall be placed in a jail or other detention facility as delineated in the Children's Code.

I. CUSTODY OF CHILDREN – ABUSE AND NEGLECT

1. A commissioned Departmental employee may take a child into custody under the provisions of the Children's Code with respect to a report of abuse and/or neglect. In accordance with the Children's Code, the officer shall, with all reasonable speed:
 - a. Release the child to the child's parent or guardian, and issue verbal counsel or warning as deemed appropriate.
 - b. Deliver the child to the CYFD Protective Services, a shelter-care facility, or medical facility.
 1. If the child is delivered to a shelter-care or health care facility, the officer shall notify the CYFD Protective Services immediately.
 2. Every commissioned Department employee has a duty and obligation to report, to the CYFD, any instance of abuse, neglect, abandonment, or other exposure to danger/harm as defined in the Children's Code.
 3. Any commissioned department employee, who receives a report of abuse or neglect, as defined in state statute, shall immediately, by telephone, transmit the facts of the report to the CYFD.
 - a. The basic facts of the report, in writing, shall be transmitted to CYFD within 48 hours.
 4. Any commissioned department employee who receives a report of abuse or neglect shall ensure that immediate steps are taken to ensure prompt investigation of the report.
 - a. Reports of criminal sexual penetration, abuse resulting in injury, exploitation, or child pornography shall immediately be referred to the Criminal Investigations Section of the State Police Division for investigation.

J. CUSTODY OF CHILDREN – INTERSTATE COMPACT

1. Departmental personnel may take children into custody from other states of the United States in compliance with the Children's Code.
2. In every instance, wherein a child from another state is taken into custody, the CYFD, Juvenile Probation will be immediately notified.
 - a. In cases of a fugitive from justice, the district attorney and Juvenile Probation having jurisdiction over the case will be notified in accordance with Section B of this policy.

K. CUSTODY OF CHILDREN – FOREIGN NATIONALS

1. In any instance wherein a child is taken into custody by Department personnel, and that child is deemed to be a citizen of a foreign country, the officer shall:
 - a. Immediately contact the JPO and CYFD Protective Services and transmit the circumstances of the custody.
 - b. Make reasonable attempt(s) to contact the national consulate of the child's home country, or in the alternative, the State Department of the United States of America.
1. Document the date, time, and person contacted as a result of this Section.

L. INTERROGATIONS

1. No person subject to the provisions of the Delinquency Act, who is alleged or suspected of being a delinquent child, shall be interrogated or questioned without first advising the child of their constitutional rights and securing a knowing, intelligent and voluntary waiver.
2. The interrogation of children under the age of 13 will be documented in the offense/incident report, but will not contain any of the statement(s)/admission(s) made by the child.
3. The arresting/investigating officer shall exercise the utmost discretion in determining whether or not to interrogate a juvenile under the age of 13.
 - a. Public safety concerns and/or the health, safety, or welfare of the child should outweigh the necessity of not conducting an interrogation of a child under the age of 13 before one is conducted.
 - b. The interrogation of children above the age of 13 will be documented in the offense/incident report, and may contain statement(s)/admission(s) made by the child, but only after consideration of the following, in accordance with the Children's Code:
 1. The age and education of the child.
 2. Whether the child was in custody at the time of questioning.
 3. The manner in which the child was advised of their rights.
 4. The length of questioning and circumstances under which the child was questioned.

5. The condition of the quarters in which the child was detained and questioned in.
6. The time of day and treatment of the child at the time of questioning.
7. The mental and physical condition of the child.
8. Whether the child had counsel, friends, relatives, or a parent/guardian present at the time of questioning.
 - a. Arresting officer(s) are encouraged to gather information and be aware of the juvenile's family/support situation. If the officer identifies a "family in need of services" or a "family in need of court ordered services", as defined in the Children's Code, the arresting officer shall document the information / evidence in the offense/incident report, or in the complaint, and forward the report or complaint to the Juvenile Probation Office and the Protective Services of the CYFD for disposition.
4. The duration of interrogations shall be strictly limited to that time which is reasonably necessary to accomplish the investigative function.
5. The number of interrogators shall be strictly limited to that number reasonably necessary to accomplish the investigative function.
6. Investigators/officers shall make reasonable attempts to explain the agency and juvenile justice system procedures to juveniles during interrogations.
7. Investigators/officers shall also make reasonable attempts to explain the agency and juvenile justice system procedures to parents or guardians when they are present for custodial interrogations. If the parent or guardian is not present and the investigator/officer is unable to make contact with them until later in the investigation, they should still make a reasonable attempt to explain the agency and juvenile justice system procedures. These explanations shall be documented in the investigator/officer's offense incident report.
8. No child under the age of 13 who is alleged or adjudicated to be a delinquent child shall be fingerprinted or photographed for identification purposes without a court order.

M. JUVENILE / CHILDREN RECORDS AND PUBLIC INFORMATION

1. All records, reports, items, and other information or data, as defined in the Inspection of Public Records Act shall be maintained and disseminated according to Department of Public Safety policy, protocol, historic practice, and/or procedure.
 - a. Upon order of a court of competent jurisdiction, and in compliance with the Children's Code, the Department will "seal" any and all records enumerated in said order or pursuant to the Children's Code with respect to any juvenile / child coming under the jurisdiction of the Department.
 1. The Law Enforcement Records Bureau of the Department of Public Safety shall ensure compliance with this Section, in consultation with the Office of Legal Affairs, Department of Public Safety.

2. Nothing in this policy or Section shall be construed as to limit the Department's ability or obligation to disclose juvenile / child information obtained or retained by the Department, in compliance with the "Inspection of Public Records Act," "Arrest Record Information Act," or other New Mexico State Statutes.

N. EVALUATION OF DPS JUVENILE ENFORCEMENT AND PREVENTION PROGRAMS

1. The Adjutant Chief of the state police shall be tasked with the responsibility of evaluating DPS juvenile and enforcement and prevention programs.
2. The Adjutant Chief shall conduct an annual review and submit a written evaluation to the Chief of the state police no later than the end of January, following the year being evaluated. The purpose of the evaluation is to document the qualitative and quantitative aspects of juvenile operations taking place statewide. Additionally, this evaluation shall address the effectiveness of the programs, whether or not the program should function as is, be modified, or be discontinued.
3. A copy of the Adjutant Chief's report shall be forwarded to the R&D Section for CALEA-related purposes.

7.0 ATTACHMENTS

Added. ➤ **A. New Mexico Secure Holding Log**

8.0 APPROVAL

APPROVED BY: _____
 s/ Gorden E. Eden Jr.
 DPS Cabinet Secretary

DATE: _____
 March 3, 2011